IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.1223 OF 1994

Ichalkaranji Municipal Workers'
Union (INTUC), Ichalkaranji Petitioner
Vs.
State of Maharashtra & ors. Respondents

Mr.S.M.Dharap for petitioner.
Mr.T.S.Ingale with Mr.Prashant Naik for R.Nos.5 & 6.
Mr.V.S.Gokhale, AGP for Resp.Nos.1 to 4.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

March 27, 2006.

P.C.

1. This petition filed under Articles 226 and 227 of the Constitution has assailed the order dated 17/8/1992 passed by the Collector, Kolhapur and the orders passed by the Additional Divisional Commissioner and Regional Director for Municipalities at Pune on 23/3/1993 and 6/11/1993.

2. The Respondent No.5-Municipal Council at Ichalkaranji passed a Resolution on 21/2/1992 for filling in the posts of Safai Kamgar and Class IV employees in the Council. It was decided that these posts shall be filled in from amongst the badli workers on the rolls of the Municipal Council with effect from 1/1/1980 and by following their seniority. Fifty posts were to be filled in by following seniority and the remaining will be taken

as per the requirement and work but on temporary basis. This Resolution was forwarded to the Collector vide the Municipal Council letter dated 16/2/1992 and the Collector by his order dated 17/8/1992 suspended the Resolution passed by the Municipal Council on 21/2/1992 by invoking his powers under Section 308 of the Maharashtra Municipalities Act, 1965. The matter was subsequently placed before the Additional Divisional Commissioner in Appeal No.13 of 1992 and by the interlocutory order dated 23rd March 1993 the Additional Divisional Commissioner modified the order passed by the Collector on 17/8/1992. The badli workers who were employed prior to 31/12/1987 and engaged as safai workers (cleaning staff) would be taken in employment as per the seniority list by the Municipal Council pursuant to the said Resolution and for the remaining posts the order passed by the Collector was confirmed. The Divisional Commissioner passed his final order on 6/11/1993 and reiterated his interlocutory order dated 23rd March 1993 and disposed off the appeal.

3. So far as the issue of employment of the safai kamgars as per the said resolution is concerned, it

has been settled in terms of the order passed by this Court in Writ Petition No.1163 of 1994 on 5th February 1999. It was noted that till the year 1996, 150 safai kamgars were appointed from the seniority list of the badli workers maintained and thereafter the Director of Municipal Administration had sanctioned 100 posts. Pursuant to the public notice in local newspapers published on 14/2/1998 the Municipal Council had sought applications and only 130 candidates furnished their particulars in response to the said advertisement. They were interviewed and only 60 were found eligible for appointment. Twenty two persons were referred to the Medical Board for age verification and remaining 48 persons were not eligible for appointment. Out of the hundred sanctioned posts the Municipal Council appointed 25 persons and further 35 persons were found eligible for appointment. They were directed to be employed and thus the list of badli workers stood exhausted so far as the safai kamgars were concerned.

4. So far as the petitioners in this case viz. the Class III employees other than safai kamgars are concerned, the Respondents state that filling in of

these posts was required to be done by following a specific procedure viz. these posts were required to be filled in through the Subordinate Services Selection Board which was at the relevant time in existence. Admittedly as at present such a Board does not exist. By way of interlocutory orders this Court had directed Respondent Nos.5 and 6 to give chance to the Class III employees who were working as badlis, casuals or temporaries along with the persons who were called from Employment Exchange and to consider their cases on individual merits. It was further made clear that they shall not be rejected merely on the ground of over age. It is not known whether any further posts were filled in by following the interlocutory order dated 14/6/1994 and the Municipal Council has not placed on record any subsequent affidavit placing on record the number posts, if any, filled in after 14/6/1994. Mr.Dharap, the learned counsel for the petitioner - Union also faces the same handicap in as much as he has not received any instructions from the petitioner - Union.

5. Under the circumstances, the petition can be disposed off by directing the Municipal Council to

fill in the vacant posts, if any, and which were sought to be filled in by the impugned resolution passed on 21/2/1992, by following the procedure to fill in such posts and applicable as at present. The Government of Maharashtra through the Department of Municipal Administration has issued the Government Resolutions prescribing the procedure to be followed to fill in such posts after the Subordinate Services Selection Boards came to be abolished.

6. We direct the Municipal Council to work out the number of posts vacant in Class III and IV and take appropriate steps to fill in the same as per the procedure in vogue as at present and complete the exercise of recruitment as expeditiously as possible and preferably within a period of six months. Needless to mention, the posts to be filled in ought to be sanctioned by the State Government.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)